

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

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Donald Babinski, in his personal capacity  
and as personal representative of the  
Estate of John Babinski,

Case No. 0:07-CV-03374 JMR-RLE

Plaintiff,

v.

Ryan Dee, as trustee for the heirs and  
next-of-kin of Kathi Babinski and as  
personal representative of the estate of  
Kathi Babinski,

Intervening Plaintiff,

v.

American Family Insurance Group,

Defendant.

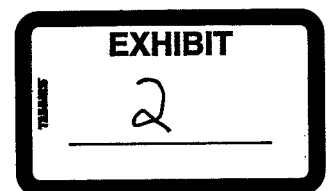
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**PROPOSED COMPLAINT OF INTERVENING PLAINTIFF RYAN DEE**

Intervening Plaintiff Ryan Dee, as trustee for the heirs and next-of-kin of Kathi Babinski and as personal representative of the estate of Kathi Babinski, for his Complaint against American Family Insurance Group, states and alleges as follows:

**PARTIES**

1. Plaintiff Donald Babinski, in his personal capacity and as personal representative of the Estate of John Babinski, is an individual who resides at 25093 Pine



Lane, Nisswa, Minnesota 56468. The Estate of John Babinski is currently being probated in the Probate Court in Crow Wing County, Minnesota.

2. Intervening Plaintiff Ryan Dee, as trustee for the heirs and next-of-kin of Kathi Babinski and as personal representative of the estate of Kathi Babinski, is an individual who resides at 12087 Robin Road, Maple Grove, MN 55369.

3. Defendant American Family Insurance Group ("American Family") is a Wisconsin entity conducting business in the State of Minnesota with its principal place of business in Madison, Wisconsin.

### **JURISDICTION**

4. Jurisdiction of the subject matter is conferred upon this Court by 28 U.S.C. §1332(a)(1), because the Plaintiffs and Defendant are citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

### **VENUE**

5. Venue in the District of Minnesota is proper pursuant to 28 U.S.C. §1391(a) because a substantial part of the events giving rise to Plaintiffs' claims occurred in Minnesota; and pursuant to 28 U.S.C. §1391(c) because a defendant corporation is, for venue purposes, deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced.

### **FACTS**

6. American Family issued an insurance policy, Policy No. 1812-9235-01-68-FPPA-SD, which became effective November 16, 2006, with Donald Babinski listed as the Policyholder/Named Insured with a \$1,000,000 policy limit per accident (the

“Policy”). The Policy insured a 2004 Dodge Ram 1500 quad ST/SLT vehicle, VIN #D7HU18D84S724782 (the “Vehicle”). The Policy had an expiration date of November 16, 2007. A true and correct copy of the Policy is attached to the Complaint as **Exhibit 1**.

7. On December 10, 2006, while the Policy was still effective, John Babinski was driving the Vehicle and was involved in a collision which resulted in the death of John Babinski and his wife, Kathi Babinski.

8. The collision took place in Crow Wing County, Minnesota, the county in which both John Babinski and Kathi Babinski resided prior to their death. Both the Estate of John Babsinki and the Estate of Kathi Babinski are being probated in Crow Wing County, Minnesota.

9. Intervening Plaintiff has brought a wrongful death lawsuit against Plaintiff Donald Babinski. The uncertainty of the coverage available threatens to delay and complicate this suit.

10. American Family maintains that the \$1,000,000 coverage does not apply based on a “household exclusion” provision in the policy. According to American Family, the policy provides only the statutory minimum amount of coverage.

### **CLAIMS FOR RELIEF**

#### **COUNT 1 DECLARATORY RELIEF**

12. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1-10 above.

13. A dispute has arisen between Plaintiff, Intervening Plaintiff and American Family concerning their respective rights, duties and liabilities to one another under the Policy, including whether American Family is required under the terms of the Policy to provide coverage up to the \$1,000,000 policy limit.

14. Intervening Plaintiff is entitled to a declaration that the Policy provides up to \$1,000,000 in insurance coverage for his wrongful death claims against Plaintiff Donald Babinski.

15. Plaintiff has no other adequate and speedy remedy at law, and a declaration of rights is necessary and proper for a resolution of the dispute.

**WHEREFORE**, Plaintiffs pray that the Court issue an order and judgment declaring that the Policy provides \$1,000,000 in coverage for Intervening Plaintiff's wrongful death claims against Plaintiff Donald Babinski and further relief as may be just and equitable.

Dated: PRITZKER, RUOHONEN & ASSOCIATES, P.A.

By: \_\_\_\_\_  
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